UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 22

1621 ROUTE 22 WEST OPERATING
COMPANY, LLC d/b/a SOMERSET VALLEY
REHABILITATION AND NURSING CENTER

- and -

Case Nos. 22-CA-29599 22-CA-29628 22-CA-29868

1199 SEIU UNITED HEALTHCARE WORKERS	WORKERS
EAST, NEW JERSEY REGION	
X	

CHARGING PARTY'S OPPOSITION TO THE EMPLOYER'S REQUESTS FOR SPECIAL PERMISSION TO APPEAL TO THE RULINGS OF THE ADMINISTRATIVE LAW JUDGE DENYING THE EMPLOYER'S PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM B-612073 AS IT APPLIES TO ITEMS 1, 2, 3, 7, 8 AND 9

Charging Party, 1199 SEIU United Healthcare Workers East ("Union"), through its attorneys Gladstein, Reif & Meginniss, LLP, hereby opposes the Employer's requests for special permission to appeal the rulings of Administrative Law Judge Steven Davis regarding Employer's petition to partially revoke Charging Party's subpoena duces tecum. Although for some inexplicable reason the Employer filed two separate requests for permission to appeal the ALJ's rulings with respect to subpoena duces tecum B-612073, Charging Party's opposition to both appeal requests is addressed in this Opposition.

Section 102.26 requires that requests to the Board for special permission to appeal a ruling of the administrative law judge "shall be filed promptly" and shall state (1) the reasons special permission should be granted; and (2) the grounds relied on for the appeal. By waiting three weeks before filing its special appeals, the Employer has failed to satisfy the precondition

that its appeal must be filed promptly and is abusing the special appeal right to delay these proceedings and impair the ability of counsel for the General Counsel and Charging Party to effectively cross-examine the Employer's witnesses. Further, its grounds for seeking the special appeal are utterly frivolous and the appeals should be summarily dismissed so as to prevent further prejudice to the ability of counsel for the General Counsel and Charging Party to litigate this case.

A. The Employer failed to make any effort to file its request for special permission to appeal promptly.

Charging Party's subpoena was served on April 18, 2011. At the unfair labor practice hearing on May 2, the ALJ denied the Employer's petition to partially revoke the subpoena with respect to paragraphs 1 through 3 of Charging Party's subpoena, and in a conference call on May 10, the ALJ denied the Employer's petition to partially revoke paragraphs 7, 8 and 9 of the subpoena. The transcript pages of the hearing reflecting the ALJ's rulings relating to paragraphs 1 though 3 and his order pertaining to paragraphs 7, 8 and 9 are annexed hereto as Exhibits A and B, respectively. At the May 2 hearing, the Employer stated that it would seek permission to take a special appeal. However, it did not serve or properly file the special appeals until May 31, 2011, the day the hearing resumed after an adjournment of more than two weeks. There simply was no reason for the Employer to have waited weeks to file its requests for special permission to appeal other than to intentionally cause a delay in the hearing or prejudice the case presented by the General Counsel and Charging Party.

B. The Employer's grounds for its appeal request are frivolous.

Paragraphs 1 though 3, documents and videotapes relating to the Employer's communications with employees during the period following the time Charging Party filed its

The Employer represented that it filed its request to take the special appeal on May 20, 2011 but it failed to serve Charging Party. Even if it had properly filed the appeal at that time, it would still have been far from prompt.

representation petition, are relevant to the allegations in the Board's complaint that the Employer solicited grievances and unlawfully discharged and reduced the hours of union supporters. The Employer held numerous mandatory meetings with employees after the petition was filed during which it solicited grievances and expressed animus toward the union. The subpoenaed materials are relevant to the allegations concerning the solicitation of grievance as well as the claim that the Employer's actions were motivated by its animus towards the union and its supporters.

Indeed, a number of witnesses – including a witness called by the Employer on May 31 — testified in this proceeding about meetings the Employer held with employees concerning Charging Party and the election. It is therefore utterly disingenuous for the Employer to seek to appeal the ALJ's rulings with respect to paragraphs 1 through 3.

Further, the Employer's claim that these communications should be limited to the period preceding the September 2 election should be rejected. After the election, the Employer met with employees, made comments reflecting its view of the employees who voted in favor of the union and proceeded to retaliate against some of these employees as alleged in the NLRB's complaint. Thus, the ALJ correctly found that documents reflecting such communications are relevant.

Finally, the documents in paragraphs 7 through 9 relate to the change in top level personnel of the Employer immediately following the filing of the representation petition. Ms. Heedles, the Administrator of the Employer was replaced by Ms. Illis days after the petition was filed and Ms. Konjoh was hired as the Director of Nursing days after Ms. Illis assumed the Administrator position. The ALJ correctly ruled that the circumstances surrounding the departure and appointments of these individuals are relevant to the motivation of the Employer when it took action against the discriminatees.

For the foregoing reasons, the Employer's request for special permission to appeal the ALJ's rulings should be immediately denied.

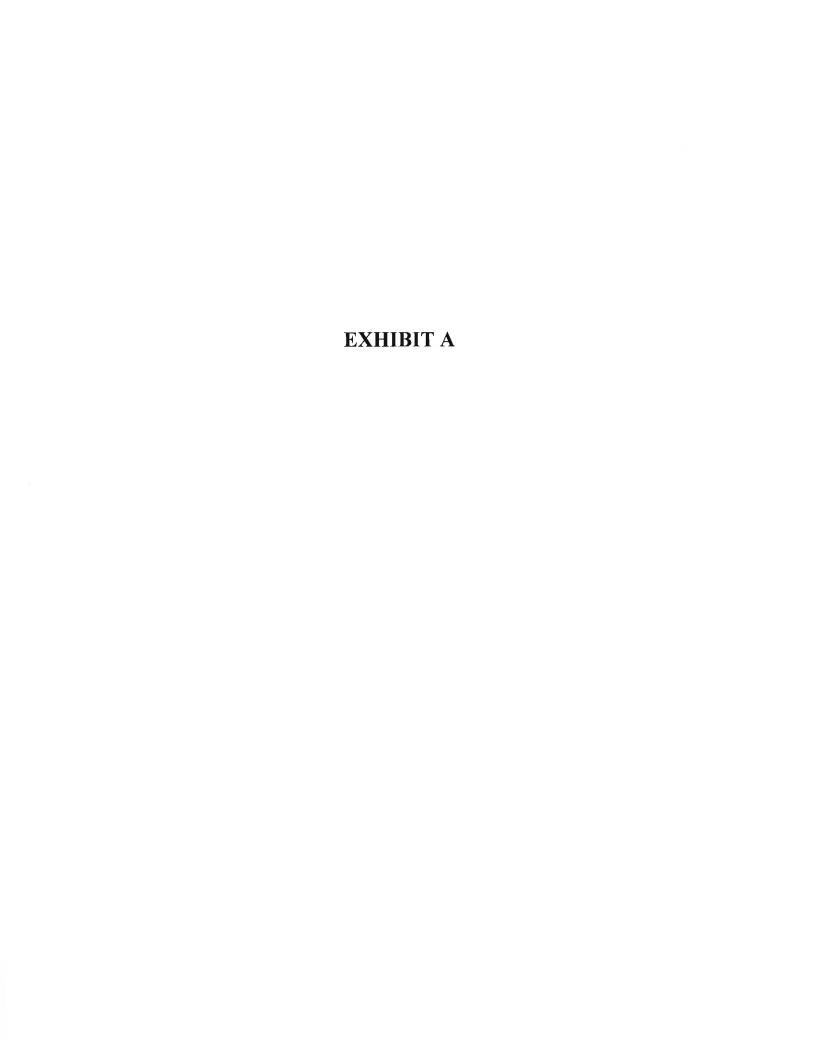
Dated: June 3, 2011

New York, New York

Respectfully submitted,

GLADSTEIN, REIF & MEGINNISS, LLP

Attorneys for Charging Party 817 Broadway, 6th Floor New York, New York 10003 (212) 228-7727



BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of:

1621 ROUTE 22 WEST OPERATING COMPANY, LLC, d/b/a SOMERSET VALLEY REHABILITATION AND NURSING CENTER,

Respondent,

And

1199SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION,

Charging Party.

Case No. 22-CA-29599 22-CA-29628 22-CA-29868

The above-entitled matter came on for hearing pursuant to notice, before **STEVEN DAVIS**, Administrative Law Judge, at the National Labor Relations Board, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey, 07102, on Monday, May 2, 2011, 9:30 a.m.

- 1 I believe Mr. Santiago is referring to here. But I am not
- 2 exactly sure what he's talking about. But there is a problem
- 3 with the way the data -- you don't get the same data if you want
- 4 data from two months ago, if you want data from a year ago. The
- 5 sheets are going to look different. I understand that much.
- JUDGE DAVIS: You issued a subpoena to the Respondent,
- 7 Ms. Dichner?
- 8 MS. DICHNER: I did.
- 9 JUDGE DAVIS: And you received certain documents?
- 10 MS. DICHNER: I did. But I didn't receive other
- 11 documents.
- JUDGE DAVIS: Which did you not receive?
- MS. DICHNER: So you have my subpoena.
- 14 JUDGE DAVIS: I do.
- MS. DICHNER: Paragraphs 1 and 4, 7, 8, and 10.
- JUDGE DAVIS: Wait a minute. Let me try to get the
- 17 subpoena. Paragraphs what?
- MS. DICHNER: 1 through 4.
- 19 JUDGE DAVIS: Did not receive, right?
- MS. DICHNER: Right.
- JUDGE DAVIS: Go ahead.
- 22 MS. DICHNER: 7 and 8. Paragraph 10. And I had issued a
- 23 second subpoena for one group of documents. I received some of
- 24 them. I believe I am receiving more of them, I believe. But
- 25 confirm on that.

- 1 JUDGE DAVIS: Let's wait till Respondent gets a hold of
- 2 the subpoena.
- 3 MR. KIESEWETTER: Do you have a copy of that? All right.
- 4 Ms. Dichner if you can give me those, what you say we owe you,
- 5 because I thought we were pretty close to being in full
- 6 compliance except for maybe one or two things --
- 7 MS. DICHNER: No.
- 8 MR. KIESEWETTER: -- that were in dispute. So go ahead
- 9 and tell me, because --
- MS. DICHNER: Okay. Nothing provided in paragraph --
- 11 MR. KIESEWETTER: Because some of these documents may not
- 12 exist. I just don't know until I --
- 13 MS. DICHNER: Well, they do. They do based on the
- 14 testimony of witnesses. So Paragraphs 1 through 4. Paragraphs
- 15 7, 8, Paragraph 10, and then there's some in-service documents
- 16 I'm still waiting for on the second subpoena.
- MR. KIESEWETTER: What do you --
- MS. DICHNER: I received, I believe, documents from --
- 19 half the documents. I had received a CD and was told that that
- 20 was half of them. And it had 2010 entries.
- MR. LIKENS: Ellen, I gave you the CD and I told you it
- 22 was 2010, not half. I think you asked for '09, 2010, and 2011,
- 23 and we gave you 2010.
- 24 MS. DICHNER: You said there was another CD, I thought.
- JUDGE DAVIS: We can't hear you, Ms. Dichner.

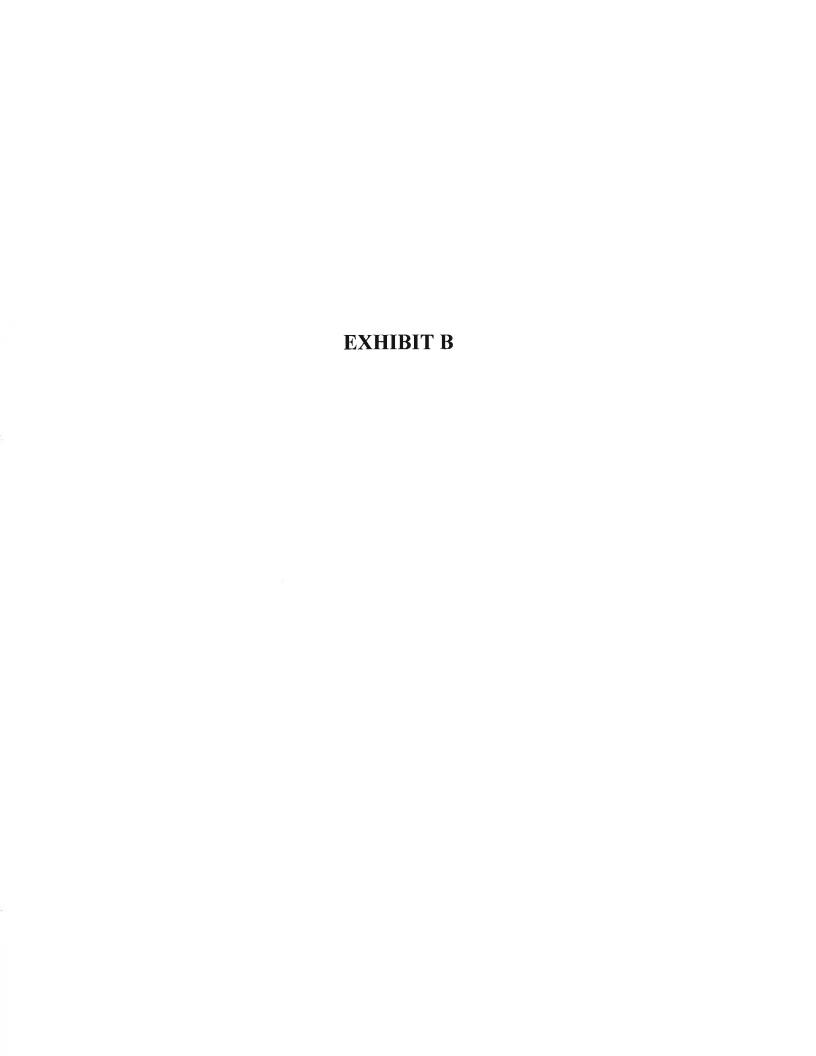
- 1 MS. DICHNER: I thought you said there was another CD.
- 2 JUDGE DAVIS: Face the microphone, if you would.
- 3 MS. DICHNER: I'm sorry. So I didn't receive anything for
- 4 2011.
- 5 MR. LIKENS: Right, that is correct. We did not produce
- 6 anything for 2011.
- 7 MS. DICHNER: Are you not producing 2011?
- 8 MR. LIKENS: I think that's part of our petition to revoke
- 9 is '09 and 2011. The additional CD you are talking about, I had
- 10 to do something, I gave Michael, that wasn't these.
- 11 JUDGE DAVIS: What paragraph are you talking about?
- MS. DICHNER: I issued a second subpoena. I don't know if
- 13 they -- I think they moved to quash. Actually, I don't know
- 14 that they -- let me see.
- JUDGE DAVIS: I'd like to do these in order because we're
- 16 jumping around here.
- MS. DICHNER: Yeah. If we could do the first.
- JUDGE DAVIS: All right. The first subpoena, Paragraph 1,
- 19 documents reflecting any and all communications that bar the
- 20 Respondent with its employees concerning the Union's 1199 and/or
- 21 the election during the period July 1, 2010, and then you
- 22 limited that to February 2011, is that right?
- MS. DICHNER: I limited that to --
- 24 JUDGE DAVIS: -- 10th, 2010.
- MS. DICHNER: Yeah.

- 1 JUDGE DAVIS: Okay. So have any of those documents been
- 2 produced?
- MS. DICHNER: No, none of the documents.
- 4 JUDGE DAVIS: The documents are clearly relevant. They
- 5 should be produced. Same with Number 2. Any documents received
- 6 as to that?
- 7 MS. DICHNER: No documents.
- 8 JUDGE DAVIS: Is there any meetings. 3, videotapes, etc.,
- 9 concerning Union's 1199 report proceeding.
- MS. DICHNER: Nothing produced.
- JUDGE DAVIS: And 4 as well. Paragraphs 1 through 4, in
- 12 my opinion, are relevant and should be produced. And 7 and 8,
- 13 you are looking for the reasons surrounding the termination of
- 14 Elizabeth Heedles and the personnel file for Doreen Illis.
- MR. KIESEWETTER: We've argued it all in our petition to
- 16 revoke. But this is even way outside the ballpark as far as
- 17 relevancy.
- 18 JUDGE DAVIS: I don't think you mentioned Paragraph 9,
- 19 Inez. Is that included in the documents you are seeking?
- 20 MS. DICHNER: I did not receive anything. Did I miss
- 21 that? I'm sorry. I missed Paragraph 9. I did not receive
- 22 anything. I had lumped them all together in my mind.
- 23 Paragraph 9 as well.
- 24 JUDGE DAVIS: All right. So 7, 8, and 9 deal with the
- 25 reasons surrounding the terminations of Heedles and Inez Konjoh,

- 1 and the file for Doreen Illis. To me it is not relevant to our
- 2 case. I think I'll have more than enough to determine
- 3 concerning the terminations of the people who have been
- 4 terminated, the employees who have been terminated. If we go
- 5 into the reasons for the discharge of Heedles, the departure of
- 6 Heedles and Inez, we'll be litigating their discharges. The
- 7 Respondent will call them. There will be an entire litigation
- 8 concerning the reasons for their discharges. We are not
- 9 concerned with that here. I'm not concerned with that here.
- MS. DICHNER: Well, I think there are issues relevant to
- 11 timing here and these documents would reflect when certain
- 12 actions were taken.
- JUDGE DAVIS: That may be the case, but I'm just not going
- 14 to go into it. We are so involved here with the employees.
- 15 That's my concern. And with respect to the file of Ms. Illis.
- 16 That remains irrelevant in my opinion. The petition to quash 7,
- 17 8, and 9 is granted.
- 18 10, communications concerning the determinations of
- 19 discipline and to terminate employees is relevant and should be
- 20 produced.
- 21 MR. KIESEWETTER: Your Honor, I believe much of this has
- 22 already been produced. And I don't know if there is some
- 23 particular file or thing they think we didn't produce, but I
- 24 think we've already produced a lot of documents with regard to
- 25 this.

- 1 JUDGE DAVIS: To the general counsel? You produced it to
- 2 the general counsel?
- 3 MR. KIESEWETTER: No, to the Union. We produced a stack
- 4 of documents that's about 10 inches high here or a foot high.
- 5 MS. DICHNER: Most of those were scheduling documents.
- 6 The documents --
- 7 MR. KIESEWETTER: Well, those documents were subpoenaed.
- 8 MS. DICHNER: Can I respond? What was not produced were
- 9 any -- what we did get were disciplinary letters, disciplinary
- 10 notices which have been, some of which have been introduced in
- 11 this hearing. What I didn't receive were any documents
- 12 reflecting the circumstances that led to these disciplines, the
- 13 investigation that led to these disciplines. None of that was
- 14 produced. All I received were the disciplines.
- 15 JUDGE DAVIS: Circumstances leading to it.
- MS. DICHNER: Right.
- 17 JUDGE DAVIS: Such as what?
- MS. DICHNER: The investigation. Documentation reflecting
- 19 investigation of the alleged wrongdoing of these employees.
- 20 Evidence surrounding what they may have discovered in connection
- 21 with these employees.
- 22 JUDGE DAVIS: If those documents are in existence, they
- 23 would be relevant to the discipline itself.
- 24 MR. KIESEWETTER: As long as they are not proof.
- 25 MS. DICHNER: I'm not seeking attorney/client privileged

- 1 communications. But if there are communications between
- 2 different administrators or management personnel, that would not
- 3 be protected.
- 4 JUDGE DAVIS: All right.
- 5 MR. SANTIAGO: Your Honor, we were going so quickly
- 6 through our subpoena that in Paragraph 7, Your Honor --
- 7 MR. KIESEWETTER: Your Honor, I don't know where we're
- 8 going here, but I'm still working on the Union's subpoena here.
- 9 Are we going to jump back to the general counsel's subpoena,
- 10 because that's in a whole different set of files I have.
- JUDGE DAVIS: I thought we had finished with the Union.
- 12 But go ahead.
- MR. KIESEWETTER: The Union had a second subpoena.
- JUDGE DAVIS: I haven't seen that.
- 15 MS. DICHNER: Did you move to quash that? I know you said
- 16 you were going to on service grounds and then I reissued it.
- MR. KIESEWETTER: The Union served the subpoena. We
- 18 objected on several grounds including the improper service of
- 19 the subpoena. The Union reserved the subpoena to cure the
- 20 service issue. It was the same subpoena. They didn't issue a
- 21 new subpoena. It was just a copy of the same. They just cured
- 22 the service, let's say. So we will say that our objection on
- 23 service is now moot. But the objection on relevancy and
- 24 everything else still would stand.
- JUDGE DAVIS: I haven't seen any of these papers in the





United States Government

NATIONAL LABOR RELATIONS BOARD

Division of Judges

120 West 45th Street - 11th Floor

New York, New York 10036-5503

May 11, 2011

RE: Somerset Valley Rehabilitation & Nursing Center Case No. 22-CA-29599, etc.

Dear Counsel:

This will confirm my advice to you in yesterday's conference call, that I have reconsidered part of my ruling concerning the Charging Party's Subpoena No. B-612073 to the Respondent.

I had previously, on the record, granted the Respondent's Petition to Partially Revoke paragraphs 7, 8, and 9 of the Subpoena on the ground that they are irrelevant, as set forth in the Petition.

After hearing the evidence in the General Counsel's case, while not crediting that evidence since I have not heard the Respondent's case, it appears that the documents sought in paragraphs 7, 8, and 9 of the Subpoena are relevant to the issues in this case.

The Subpoens seeks documents, essentially, relating to the termination of the employment of Elizabeth Heedles as the Respondent's administrator, the departure from employment of Inez Konjoh, and the personnel file of Doreen Illis, the new administrator.

The reasons and circumstances surrounding the departure of Heedles and Konjoh, and the appointment of Illis, are relevant to the issues in this case as they relate to the motivation of the Respondent in actions allegedly taken against the alleged discriminatees, and as to other issues.

Accordingly, the Respondent's Petition to Partially Revoke the Charging Party's Subpoena as to paragraphs 7, 8, and 9 of the Subpoena is denied.

Steven Davis

Administrative Law Judge

CERTIFICATE OF SERVICE

Charging Party's Opposition to the Employer's Request for Special Permission to Appeal to the Rulings of the ALJ is being electronically filed today (June 3, 2011) with the National Labor Relations Board. Copies of this submission have been served today via email on counsel for all other parties, and on the ALJ, as follows:

Jay W. Kiesewetter, Esq.

jkiesewetter@kiesewetterwise.com

Saulo Santiago, Esq.

saulo.santiago@nlrb.gov

Steven Davis, ALJ

steven.davis@nlrb.gov

/s/ William S. Massey William S. Massey